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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
3470 Twelfth Street, Riverside, CA 92501
CIVIL MINUTES -- GENERAL

Case No. ED CV 08-01864-SGL(CWx)

Date: December 19, 2008

Title: BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATE HOLDERS CWALT,
INC., ET AL. -v- JORGE ALTAMIRANO, ET AL.

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PRESENT: HONORABLE STEPHEN G. LARSON, UNITED STATES DISTRICT JUDGE

Jim Holmes
Courtroom Deputy Clerk

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None present

ATTORNEYS PRESENT FOR DEFENDANTS:

None present

PROCEEDINGS: ORDER TO SHOW CAUSE

The Court has received and reviewed defendant's December 16, 2008, notice of removal, seeking to remove to this Court an unlawful detainer action filed by plaintiff in San Bernardino County Superior Court. In the notice, defendant argues that this Court has subject matter jurisdiction over the unlawful detainer action because in his answer to the claim he asserted as a defense that plaintiff had violated the Truth-In-Lending Act and the Real Estate Settlement Procedures Act. (Notice Removal at 2 ¶ 6). The problem with that argument is that the lodging of a federal defense to a state law claim in state court does not serve to transform the plaintiff's claim as one arising under federal law; it is the character of the claim being pressed by the plaintiff, not a defense interposed by defendant, that is critical in determining whether removal is appropriate. "[A] case may not be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue." Caterpillar Inc. v. Williams, 482 U.S. 386, 393 (1987); see also Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 12 (1983).

Given that a substantial question exists as to whether this Court has jurisdiction to hear this

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v JORGE ALTAMIRANO, ET AL.

MINUTE ORDER of December 19, 2008

matter, defendant is hereby **ORDERED TO SHOW CAUSE** within seven (7) days of the date of this Order why this case should not be remanded to state court. Defendant's failure to timely respond to the Order to Show Cause shall be considered by the Court as a failure to prosecute this matter and will result in the summary remand of the matter to state court.

IT IS SO ORDERED.